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**IN THE
COURT OF APPEALS OF INDIANA**

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No. 48A02-0803-CR-286

STATE OF INDIANA,
Appellee-Plaintiff.

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Fredrick R. Spencer, Judge
Cause No. 48C01-0612-FC-468

August 22, 2008

FRIEDLANDER, Judge

Jeffrey M. Robinson appeals the revocation of his probation and the execution of his previously suspended sentence. He presents the following consolidated and restated issues for review:

1. Did the trial court properly revoke Robinson's probation?
2. Did the trial court abuse its discretion in sanctioning Robinson?

We affirm.

Robinson and Toni Driver had a long-term domestic relationship that Driver ended in September 2006. Robinson could not accept Driver's decision to move on. On September 23, he went to Driver's residence to discuss their relationship. Robinson, who had been drinking, ignored her request for him to leave. He threatened to kill her or burn her house down and then kill himself.

On September 27, Driver obtained a protective order against Robinson. Despite the protective order, Robinson continued to approach Driver and leave notes for her. Then, on the morning of October 5, Robinson arrived on Driver's front porch and invaded her privacy.

Robinson's intentional course of conduct between September 23 and October 5 caused Driver to feel terrorized, frightened, and intimidated.

The State charged Robinson with class D felony intimidation and class C felony stalking, as well as invasion of privacy in a separate cause. On July 17, 2007, Robinson entered into a plea agreement with respect to both causes that provided for him to plead guilty to stalking and intimidation, both as class D felonies. The agreement provided for consecutive three-year sentences, with Robinson released to probation on the day of sentencing. As a condition of probation, he was to have no contact with Driver. Upon his

successful completion of probation, the State agreed it would not oppose reduction of the offenses to class A misdemeanors.

At a hearing on July 23, Driver informed the trial court that she opposed the plea agreement as too lenient, noting that Robinson had threatened to kill her, her two children, and her unborn child and had attempted to grab her daughter while he was stalking Driver at school. Based on Driver's testimony, the trial court rejected the plea agreement. At some point thereafter, Driver decided not to oppose the plea agreement as long as Robinson was ordered to "stay completely away" from her and her children while on probation. *Transcript* at 27. Thus, at a hearing on September 17, the trial court accepted the plea agreement and took great lengths to explain to Robinson that he was to have no contact with the victim or her children.¹ Robinson was released that day and placed on probation.

Within two days Robinson began making harassing phone calls to Driver. The first came in the middle of the night, and the caller was silent when Driver answered. Initially, Driver thought nothing of the call. She received several more silent calls that day. Four or five of the calls came from a cell phone, which was linked to Robinson upon later investigation by police. Driver continued to receive calls over the coming days. Subsequent investigation indicated that Robinson made several middle-of-the-night calls to Driver using a pay phone at a gas station near his home,² which was on the opposite side of town from Driver.

On September 27, Driver contacted Detective Carl Caldwell of the Elwood Police

¹ The trial court entered a no-contact order, which Robinson has failed to provide on appeal.

Department regarding the calls she had been receiving. During one such call in September, Driver said, “Hey, if you got something you want to say to me, why don’t you just come by the house?” *Id.* at 61. The caller did not respond, but about twenty minutes later Robinson rode by her house on a bicycle and came within ten feet of her. On numerous other occasions in late September and mid-October Robinson was seen in the area of Driver’s home by Driver, her neighbors, or her cousin, Cody Sides (who moved in with Driver and her children to protect them from Robinson). Because of these reports, police patrolled the area on a regular basis. We address only a few of the sightings/incidents below.

Around midnight on September 27, Sides was sitting on the front porch of Driver’s home and saw Robinson down the block. Driver called the police as Sides chased him to no avail. The police were subsequently unable to locate Robinson. Thereafter, on the morning of October 12, a neighbor saw Robinson on Driver’s front porch wearing latex gloves. Driver subsequently found a note on her door from Robinson that said: “Are you trying to harass me or stalk me and how’s the baby doing?” *Id.* at 63. A few days later, Driver found, on her front porch, her high school yearbook with her picture torn out.

On the morning of October 16, Sides once again saw Robinson in the area. This time Robinson was within fifty feet of Driver’s house. Sides called police on his cell phone while he pursued Robinson through the neighborhood. Robinson was arrested about two blocks from Driver’s home in possession of a folding knife, binoculars, and a plastic bag containing pictures of Driver.

² Surveillance tapes from the gas station showed Robinson purchasing cigarettes within minutes of one of the calls to Driver.

The State filed a petition for violation of probation on October 4, which was amended on October 17. The amended petition alleged the following violations:

- A. Failure to report to probation as directed.
- B. The defendant continues to harass the victim Toni Driver of this offense.
- C. On or about September 27, 2007 and October 16, 2007... [Robinson] did knowingly stalk Toni Driver when [Robinson] had an unrelated conviction for an offense under IC-35-45-5 against the same Toni Driver....
- D. On or about October 16, 2007... [Robinson] did knowingly stalk Toni Driver while [Robinson] was armed with a deadly weapon, to-wit: a knife.
- E. On or about September 27, 2007 and October 16, 2007... [Robinson] did knowingly stalk Toni Driver when [Robinson]'s stalking of Toni Driver violated a no contact order issued as a condition of probation and when [Robinson] had been given actual notice of the order.

Charges were filed in Madison County Circuit Court under Cause #48C01-0710-FB-508

Count I, Stalking, class B felony

Count II, Stalking, class B felony

Count III, Stalking, class C felony

Appellant's Appendix at 20-21. Following the probation revocation hearing on November 5, 2007, the trial court revoked Robinson's probation based upon his violation of the "terms and conditions of the no contact order not once but several times." *Id.* at 4. Thereafter, the trial court ordered Robinson to serve the remaining portion of his previously suspended sentence of six years in prison. Robinson now appeals both the finding of a violation and the sanction imposed.

Probation is a matter of grace and is a conditional liberty that is a favor, not a right. *See Kincaid v. State*, 736 N.E.2d 1257 (Ind. Ct. App. 2000). The trial court determines the conditions of probation and may revoke probation if the probationer violates a condition of probation. *Id.* A trial court's order regarding revocation of probation is reviewed for an abuse of discretion. *Johnson v. State*, 692 N.E.2d 485 (Ind. Ct. App. 1998). Further, a probation hearing is civil in nature, and the State must prove the alleged violation of probation by a preponderance of the evidence. *Braxton v. State*, 651 N.E.2d 268 (Ind. 1995). On review, we neither reweigh the evidence nor judge the credibility of witnesses, and we look only to the evidence most favorable to the State. *Id.* We look to the evidence most favorable to the court's judgment and determine whether there is substantial evidence of probative value supporting revocation. *Marsh v. State*, 818 N.E.2d 143 (Ind. Ct. App. 2004). If so, we will affirm. *Id.*

The evidence in this case plainly reveals by a preponderance of the evidence that within a matter of days after being released to probation Robinson began not only contacting Driver, the victim of his previous crimes, but also harassing her and eventually stalking her. This was in clear violation of the terms of his probation and the court's direct order that he have no contact with Driver. Moreover, we cannot agree with Robinson's claim that he did not have notice that the alleged probation violations concerned his conduct between late September and mid-October. As set forth above, the allegations included that Robinson continued to harass Driver and that on or about September 27 and October 16, 2007, Robinson stalked Driver in violation of the no-contact order. The evidence presented at the revocation hearing, as set out in detail above, was all within the scope of the allegations in

the petition for revocation of probation and adequately supports the trial court's finding of repeated violations of the no-contact order.

2.

Robinson further argues the court abused its discretion by ordering him to serve his entire suspended sentence in prison. He claims his request to be placed on work release or home detention was a "far more appropriate sanction to be imposed." *Appellant's Brief* at 12.

Indiana Code Ann. § 35-38-2-3(g) (West, PREMISE through 2007 1st Regular Sess.) provides that upon finding a violation of probation, a trial court may "order execution of all or part of the sentence that was suspended at the time of initial sentencing." We review the trial court's decision for an abuse of discretion. *Goonen v. State*, 705 N.E.2d 209 (Ind. Ct. App. 1999).

Here, the trial court specifically found, "given the continuity and the sequence of events in this case, ... Community Corrections would be contraindicated." *Transcript* at 98. We agree. As set forth above, the evidence reveals that Robinson blatantly ignored the no-contact order by harassing, stalking, and tormenting Driver for several weeks following his release. These actions began only two days after he was placed on probation and expressly warned by the trial court not to have any contact with his victim, whose life he had previously threatened. When police finally arrested Robinson near Driver's home, he was found to be in possession of photos of his victim, binoculars, and a knife. In light of Robinson's sustained course of conduct while on probation, the trial court was reasonably skeptical of his ability to behave properly on work release or home detention. We find no

abuse of discretion with respect to the sanction imposed by the trial court.

Judgment affirmed.

DARDEN, J., and BARNES, J., concur